

**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MIDDELBURG**

CASE NO: BA23/ 2025

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED: YES/NO

21/1/2026

DATE

SIGNATURE

In the matter between:

THABISO CHARIES MNISI

APPELLANT

and

THE STATE

RESPONDENT

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be the 21 January 2026 at 12h00.

JUDGMENT ON BAIL APPEAL

Malangeni AJ

Introduction

[1] On the 10 of May 2024, the appellant appeared before Ermelo Magistrate's Court applying for bail on a Schedule 5 offence. The magistrate refused to admit him to bail.

[2] The appellant is aggrieved by such a decision. It is on that basis that he challenges the court a quo's decision by noting an appeal. The appellant's right to note an appeal is governed by section 65(1)(a) of the Criminal Procedure Act 51 of 1977 ("the CPA"). This section provides that:

"An accused who considers himself aggrieved by the refusal by a lower court to admit him to bail or by the imposition by such court of a condition of bail, including a condition relating to the amount of bail money and including an amendment or supplementation of a condition of bail, may appeal against such refusal or the imposition of such condition to the superior court having jurisdiction or to any judge of that court if the court is not then sitting."

[3] In terms of section 65(4) of the CPA, the court or the Judge hearing the appeal should not set aside the decision against which the appeal is brought, unless such court or Judge is satisfied that the decision was wrong, in which event the court or judge shall give the decision which, in its or his opinion, the lower court should have given. In *S v Barber*,¹ the Judge remarked as follows:

"It is well known that the powers of this Court are largely limited where the matter comes before it on appeal and not as a substantive application for bail. This Court has to be persuaded that the magistrate exercised the discretion which he has wrongly. Accordingly, although this Court may have a different view, it should not substitute its own view for that of the magistrate because that would be an unfair interference with the magistrate's exercise of his discretion. I think it should be stressed that, no matter what this Court's own views are, the real question is whether it can be said that the magistrates who had the discretion to grant bail but exercised that discretion wrongly... Without saying that the magistrate's view was actually the correct one, I have not been persuaded to decide that it is the wrong one."

Grounds of Appeal

¹ *S v Barber* 1979 (4) SA 218 (D) at 220E-H.

[4] The appellant's grounds of appeal are based on the following:

4.1 That the honourable magistrate erred in finding that the appellant had not discharged the onus to show that his release on bail will be in the interests of justice;

4.2 That the honourable magistrate erred in not attaching sufficient weight to the facts and evidence deposed to in the respective bail application of the appellant, in which the appellant raised substantive grounds upon which it was shown that it would be in the interest of justice to release him on bail;

4.3 That the learned magistrate erred by not attaching sufficient and necessary weight on the appellant's community and family ties to the place of trial;

4.4 That the honourable magistrate erred in not considering the prejudice that the appellant will suffer as a result of his continued incarceration pending the finalisation of the trial. In particular the State did not dispute that the appellant had given two addresses that were not verified and that there was no reason for neglecting to do so, and that the appellant was responsible for his child's maintenance.

4.4 That the learned magistrate erred by not considering that the appellant has no pending cases against him and there was no substantiation on the fear that the appellant will evade his trial or any history suggesting any prior evasion of trial.

4.5 That the learned magistrate erred in not placing the appropriate weight on the failure by State to substantiate the fear that the witnesses may be influenced and did not consider that State failed to show any link or any personal knowledge or relationship that the appellant may have with witnesses and his ability to influence them, if any.

4.6 That the learned magistrate erred by negating the constitutional right of the appellant to be presumed innocent until proven guilty and disregarded this right and erred by making a negative inference from the poorly structured evidence given by State against the appellant.

4.7 That the learned magistrate erred in finding that the appellant had failed to discharge the onus to prove that it is in the interests of justice to be released on bail and failed to look at all the cumulative factors raised in the appellant's application and particularly failed to place regard on the fact that the matter fell under the ambit of schedule 5 of the CPA 51 of 1977 and not schedule 6.

Evidence by the Parties.

[5] During his bail application, the appellant filed an affidavit; the brief contents were as follows:

5.1 He resides at 1[...] A R[...] street in Ermelo. He has been residing at that address since 2018 with his brother. The property belongs to his grandfather. His alternative address is 3[...] E[...] P[...], Wesselton in Ermelo. He is not married but a father of child who is two years old. At the time of his arrest, he was unemployed but doing odd jobs earning approximately R900 00 per month.

5.2 He had a previous conviction of business burglary and a previous conviction of possession of dagga, wherein he paid an AOG. He does not have any pending cases.

5.3 He has no passport or any document he can use to travel outside the country.

5.4 He knows the deceased and he intends to plead not guilty.

5.5 He is not a flight risk. He is not a danger to the society. He will not interfere with the investigation or threaten or communicate with witnesses. If released on bail, he will not commit a Schedule1 offence or any other offence.

5.6 He will not undermine or jeopardise the functioning of the criminal justice system.

5.7 He will abide with all the bail conditions imposed by the court.

[6] In opposing bail, the state led evidence of the investigating officer, namely Dorothea Maria Aucamp, whose brief evidence was that:

6.1 The accused has got a couple of addresses. However, she had not yet confirmed these addresses.

6.2 She has got statements of witnesses who witnessed the scene. Such witnesses saw three to four men, including the accused chasing the deceased.

6.3 She opposes bail as the accused does not have a permanent work address. Therefore, there is nothing to keep him in Ermelo. She is still looking for the other three men.

6.4 During cross examination by the defence, she conceded that there is no evidence to suggest that the accused could destroy or conceal the evidence.

ARGUMENTS BY THE PARTIES

7. Both parties filed written heads of arguments.

8. The respondent (State) does not oppose this appeal. I do understand his reasons for not opposing it. On paragraph 4 of his heads of arguments, he is mentioning the following;

8.1 That the court will say after further consideration, the interests of justice do not permit the release of the accused person on bail. The court a quo does not mention what it considered as facts on this score.

8.2 The strength of the State's case against the accused. I still do not know what the case for State all is about. The facts are not clear.

8.3 There are outstanding investigations on this matter, the accused is still to be properly linked to the offence.

8.4 When I read the transcribed record one gets the impression that the police are not really committed to the case, which raises uncertainty whether there will be any prospect of successful prosecution in this matter. The investigating officer of this case is not the arresting officer, as such she does not know how the accused was arrested.

8.5 There were no efforts put in confirming or verifying the residential address of the appellant, which means, this appellant can still be traced without difficulties, issues of residential address play insignificant role, therefore the issue of being a flight risk is neither there nor not here.

9. The legal representative for the appellant asks that the bail court's decision be set aside. In paragraph 6 of his heads of arguments, he states that the appellant;

9.1 Has a stable accommodation.

9.2 Has community ties.

9.3 Has no history of absconding.

9.4 Has complied with bail previously.

9.5 Was promptly arrested.

9.6 The I O's investigation was incomplete and speculative.

9.7 The State did not prove any real risks.

The Applicable Law

[9] It is common cause that the charge falls in the bracket of offences covered under schedule 5 of the Criminal Procedure Act 51 of 1977 (“Act 51 of 1977”).

[10] Section 60 (11) (b) of Act 51 of 1977 states the following: “(11) Notwithstanding any provision of this Act, where an accused is charged with an offence referred to - (b)In Schedule 5, but not in schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that the interests of justice permit his or her release.”

[11] In *S v Smith and Another* 1969 (4) SA 175 (N) at 177 e- f stated that; “The Court will always grant bail where possible, and will lean in favour of and not against the liberty of the subject provided that it is clear that the interests of justice will not be prejudiced thereby”

[12] The Constitution guarantees an arrested person the right to be released on bail. Section 12(1) provides that:

“Everyone has the right to freedom and security of the person, which includes the right–

...

(b) not to be detained without trial.”

[13] The release of the arrested person on bail gains support from section 35(1) of the Constitution. This section provides that:

“Everyone who is arrested for allegedly committing an offence has the right–

...

(f) to be released from detention if the interests of justice permit, subject to reasonable conditions”.

[14] In my view, this section gives the court hearing a bail application a judicial discretion. This means that the right to bail is not an entitlement. In other words, the court, in exercising its discretion, may lean in favour of refusing bail rather than granting it. In *S v Sambo*,² reference was made to section 35(1)(f), and it was stated that: "It is part of the constitutional design to, where appropriate, limit or even deprive an individual his or her freedom".

[12] In *S v Dlamini; S v Dladla and others; S v Joubert: S v Schietekat*,³ Kriegler J remarked as follows: "What is of importance is that the grant or refusal of bail is under judicial control, and judicial officers have the ultimate decision as to whether or not, in the circumstances of a particular case, bail should be granted".

[13] The right to bail is in line with the arrested person's presumption of innocence until proven guilty by a competent court of law. In *S v Acheson*,⁴ Mahomed AJ remarked as follows:

"An accused person cannot be kept in detention pending his trial as a form of anticipatory punishment. The presumption of the law is that he is innocent until his guilt has been established in Court. The Court will therefore ordinarily grant bail to an accused person unless this is likely to prejudice the ends of justice".

[14] In considering any decision in a bail application, the court must be guided by what is contained in the provisions of section 60(4) (a) to (e) of CPA.

[15] Bail can be denied if one or more of these are established:

15.1 (a) where there is a likelihood of endangering the public/person or committing a Schedule 1 offence.

15.2 (b) where there is a likelihood of the accused fleeing.

² *S v Sambo* [2020] ZANHC 27.

³ *S v Dlamini; S v Dladla and others; S v Joubert: S v Schietekat* 1999 (2) SACR 51 (CC) at 88H-I and 89A.

⁴ *S v Acheson* 1991 (2) SA 805 (NM) at 822A-B.

15.3 (c) where there is a likelihood of influencing/intimidating witnesses or concealing evidence.

15.4 (d) where there is a likelihood of disrupting the criminal justice system.

15.5 (e) where there is a likelihood of disturbing public order or undermining peace/security.

[16] This does not mean that all these factors must exist at the same time. It suffices when one or more of them have been established.

Evaluation

[18] I earlier on indicated that I do understand as to why the State decided not to oppose this bail appeal. The State Counsel questioned the judgment of the court a quo. In criminal appeals, the State as respondent would focus on the judgment of the court to decide whether it is defensible or not. In simple terms, the State is expected to rely on a court's judgment. A judgment is supposed to detail the reasons for reaching a conclusion. To just say; the strength of the state's case and outstanding investigations, the interests of justice do not permit the release of the accused person on bail. This is a short cut that cannot at all amount to a judgment. As a judicial Officer, you have to communicate your decision at the end of the proceedings through giving a full judgment so that the parties can be able to understand as to how the decision has been reached. In *Strategic Liquor Services v Mvumbi*⁵ para 14 the court said that "[I]t is elementary that litigants are ordinarily entitled to reasons for a judicial decision following upon a hearing, and, when a judgment is appealed, written reasons are indispensable. Failure to supply them will usually be a grave lapse of duty, a breach of litigant's rights, and an impediment to the appeal process".

[19] The value of a Judgement was explained by the Constitutional Court in *Mphahlele v First National Bank of SA Ltd*⁶ as follows;

⁵ *Strategic Liquor Services v Mvumbi* NO (2009) 30 ILJ 1526(CC); 2010(2) SA 92 (CC)

⁶ *Mphahlele v First National Bank of SA Ltd* 1992 (2) SA 667 (CC)

“It explains to the parties, and to the public at large which has an interest in courts being open and transparent, why a case is decided as it is. It is a discipline which curbs arbitrary judicial decisions. Then, too, it is essential for the appeal process, enabling the losing party to take an informed decision as to whether or not to appeal or, where necessary, seek leave to appeal. It assists the appeal Court to decide whether or not the order of the lower court is correct. And finally, it provides guidance to the public in respect of similar matters”

[20] The judgment must cover reasons as to why a certain decision has been reached as such is of utmost importance to our system of law. In *NGABASE AND ANOTHER V S* [2011] JOL 26723(ECG), delivered on 25/12/2010, at para [2], the judges referred to a writing by the former Chief Justice, Corbett JA on the issue of: The duty to give reasons; - South African Law Journal 1998 volume 115 at 116-128. He said that “ As a general rule, a court which delivers a final judgment is obliged to give reasons for its decision. This applies to both civil and criminal cases. In civil matters this is not a statutory rule but one of practice. In *Botes & another v Nedbank Ltd* the Appellate Division held that where a matter is opposed and the issues have been argued, litigants are entitled to be informed of the reasons for the judge’s decision. The court pointed out that a well-reasoned judgment may well discourage an appeal by the loser; and the failure to state reasons may have the opposite effect, that is, encourage an ill-founded appeal. In addition, should the matter be taken on appeal, the court of appeal has a similar interest in knowing why the judge who heard the matter made the order which he did. But there are broader considerations as well. In my view, it is in the interests of the open and proper administration of justice that the courts state publicly the reasons for their decisions. Whether or not members of the general public are interested in a particular case- and quite often they are- a statement of reasons gives some assurance that the court gave due consideration to the matter and did not act arbitrarily. This is important in the maintenance of public confidence in the administration of justice.”

[20] The crux of this bail appeal is for this court to consider whether the bail court decided correctly or not in refusing to admit the appellant to bail. In consideration of this issue, this court has to determine whether the appellant has discharged the burden that lies with him in terms of section 60(11)(b).

[21] The appellant, during the bail application, placed his personal circumstances, inclusive of having family ties within the area of jurisdiction of the court a quo. From his evidence, it is clear that he has a fixed address and no evidence to the effect that he resisted the arrest. No evidence adduced by the Investigator that he may evade trial. The evidence of the IO leans in favour of the appellant not getting bail. This is evidenced by the fact that she came to court to oppose bail without having full information about the appellant, for example she failed to verify his addresses. From her grounds of opposition, she lacks solid reasons. An accused person has a right to bail and has a presumption of innocence. One cannot then ordinarily oppose bail without a substance or valid grounds.

[22] In my view, there is no likelihood that appellant will commit any of the grounds mentioned in section 60(4)(a) to (e) of the CPA. He is therefore a candidate to be admitted into bail.

[23] The discretion of the court's a quo attracts the interference of this court as it was not exercised judicially. Therefore, the appeal must succeed.

Order

[33] The bail appeal is upheld.

[33.1] The appellant is admitted into bail of R1000.00(One thousand rand) pending his trial and subject to the following conditions-

(a) To attend his trial until excused by the court.

(b) To report to ERMELO Police Station on Mondays and Fridays between 8am and 20h00 until the case is finalised.

M MALANGENI

ACTING JUDGE OF THE HIGH COURT

MPUMALANGA DIVISION, MIDDELBURG

APPEARANCES:

FOR THE APPELLANT: MR NYAMBOSE

INSTRUCTED BY NYAMBOSE&ASSOCIATES INC.

FOR THE RESPONDENT: ADVOCATE MOTHEOGANE

DPP'S OFFICE

MIDDELBURG

DATE OF HEARING: 15 DECEMBER 2025

DATE OF DELIVERY: 21 JANUARY 2026